

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JOSE JORGE GARCIA
TX-1332960-R

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DOCKETED COMPLAINT NO. 05-136

AGREED FINAL ORDER

On this the 10th day of August, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the license and certification of Jose Jorge Garcia, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Jose Jorge Garcia, a state certified residential real estate appraiser, holds certification number TX-1332960-R, and has been certified since October 22nd, 2003.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about March 28th, 2005, Respondent appraised the subject property located at 4211 Heather Park Drive, Texas ("the Heather Park property") for the client, Prodigy Mortgage.
4. On April 6th, 2005, TALCB received a complaint against Respondent from Lawrence Thames, Jr. a review appraiser for Aegis Mortgage Corporation, in accordance with TEX. OCC. CODE § 1103.451. The complaint alleged that Respondent's appraisal report on the subject property was fraudulent and contained an inflated opinion of market value, based in part on the use of inappropriate comparable sales which increased the value indicated in the report.
5. On or about April 13th, 2005 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. § 2001 et. seq., notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response was received.

6. The Enforcement Division concluded that the Respondent's appraisal report for the Heather Park property violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

- a) USPAP Ethics Rule – Respondent failed to comply with the record keeping provisions of USPAP by not maintaining an adequate work file during the course of his Heather Park appraisal assignment. Respondent misrepresented that he made a visual inspection of the Heather Park property when he made no such inspection;
- b) USPAP Competency Rule – Respondent did not have the knowledge and experience to complete the appraisal assignment competently nor did he disclose the lack of experience, become competent and then describe the steps taken to obtain knowledge;
- c) USPAP Standard 2-2(b) – Respondent failed to prominently state the report option he used;
- d) USPAP Standards 1-2(c) and 2-2(b)(v) – Respondent failed to provide the source of his definition of market value;
- e) USPAP Standards 1-2(f) & 2-2(b)(vii) – Respondent failed to report his scope of work necessary to complete the assignment;
- f) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the Heather Park property's site description adequately because he combined two adjacent lots, which belonged to the same owner. Failure to explain that the subject improvements are on these two lots was misleading;
- g) USPAP Standards 1-3(b) & 2-2(b)(x) – Respondent failed to provide a brief summary of his supporting rationale for his determination of the Heather Park property's highest and best use;
- h) USPAP Standards 1-4(b)(i) & 2-2(b)(ix) – Respondent failed to use an appropriate method or technique to develop an opinion of the Heather Park property's site value. He provided no support for his site value determination in his work file;
- i) USPAP Standards 1-4(b)(ii) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements. Respondent cited Marshall & Swift cost service as a source for his data and also claimed to have used comparable site sales, but no proof of that data was contained in his work file and Respondent did not use the Marshall & Swift cost service in approach analysis as he indicated;

- j) USPAP Standards 1-4(b)(iii) & 2-2(ix) – Respondent failed to collect, verify, analyze and reconcile accrued depreciation correctly;
- k) USPAP Standards 1-1(a) & 1-4(b) – Respondent did not employ recognized methods and techniques correctly. His lack of supporting data in his work file coupled with his lack of detail as to his reasoning behind his site and improvement value conclusions indicate that he did not correctly employ recognized methods and techniques. In addition his dwelling price per square foot differs significantly from that calculated in the Marshall and Swift Cost Handbook even though his report indicates he relied on this data source;
- l) USPAP Standards 1-4(a) & 2-2(b)(ix) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately. Respondent did not use the most similar and comparable sales available when conducting his sales comparison approach. Sales used were outside of the immediate subdivision in which the Heather Park property was situated even though other, comparable sales were readily available in that subdivision. Respondent failed to use any houses built during the same time period as the houses in the subdivision as comparable sales and instead used more recently constructed houses. Respondent erroneously used a larger lot size which led him to select superior comparable sales that should not have been used in his sales comparison approach. The sales Respondent used were of superior construction quality and consistently sold for higher average prices than the houses in the Heather Park property's immediate subdivision. Respondent failed to make appropriate location adjustments. This had the effect of inflating Respondent's opinion of market value;
- m) USPAP Standards 1-1(a) & 1-4(a) – Respondent did not employ recognized methods and techniques correctly in his sales comparison approach for the reasons noted above;
- n) USPAP Standards 1-6(a) & (b) & 2-2(b)(ix) – Respondent's reconciliation was skewed because the data used was inappropriate and led to an inflated market value determination;
- o) USPAP Standards 1-4(e) & 2-2(b)(ix) – Respondent incorrectly added the borrower's adjacent lot and its improvements without explanation. He failed to report the impact the assembled site's square footage might have on marketability;
- p) USPAP Standard 1-1(a) – For the reasons noted above, Respondent did not employ recognized methods and techniques correctly to produce a credible appraisal report;
- q) USPAP Standard 1-1(b) – Respondent committed substantial errors of omission or commission that significantly impacted his appraisal report. These include

use of sales outside the subject subdivision even though comparables were available within the subdivision; failure to make location, size and quality adjustments;

- r) USPAP Standard 1-1(c) – Respondent rendered appraisal services that were certainly careless or negligent for the reasons noted above;
- s) USPAP Standard 2-1(a) – For the above-mentioned reasons, Respondent did not set forth his appraisal report in a manner that will not be misleading; and,
- t) USPAP Standard 2-1(b) – Respondent's report does not contain sufficient information to enable the intended users of the appraisal to understand the report since no useful data or analysis was provided.

7. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by failing to conform to USPAP in effect at the time of the appraisal report for the Heather Park property.

8. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in the appraisal report of the Heather Park property. These material misrepresentations and omissions of material fact include: omitting more appropriate comparable sales that were within the Heather Park property's subdivision; misrepresenting that he inspected the Heather Park property when he had not done so; misrepresenting that he used Marshall & Swift cost data to support his cost approach analysis, when did not use this data source; misrepresenting that he knew how to analyze and account for depreciation in his cost approach analysis when he did not know how to properly and competently conduct this portion of the cost approach analysis.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over these matters pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451–1103.5535 (Vernon 2005).
2. Respondent violated the following USPAP provisions as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Ethics Rule; USPAP Competency Rule; USPAP Standards Rules: 2-2(b), 1-2(c) and 2-2(b)(v); 1-2(f) & 2-2(b)(vii); 1-2(e)(i) & 2-2(b)(iii); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-4(b)(iii) & 2-2(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b))(ix); 1-1(a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(ix); 1-4(e) & 2-2(b)(ix); 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b).
3. Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(9) by making material misrepresentations and omissions of material facts in his Heather Park property appraisal report.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent shall:

1. Have his certification revoked, with the revocation being fully probated for a two year and 6 month period under the conditions outlined below:

- a. Respondent shall not sponsor any trainees during the entirety of his 2.5 year probation period;
- b. Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within twenty days of notice of any such request; and,
- c. Respondent shall fully comply with the provisions of this Order.

2. Respondent shall submit to a reexamination for his certification, receive a passing grade on such reexamination and submit documentation of successful completion of the reexamination within 9 months of the effective date of this order;

3. Pay to the Board an Administrative Penalty of \$3,000.00;

4. Attend and complete a minimum, 15 classroom-hour course in USPAP;

5. Attend and complete a minimum, 30 classroom-hour course in Sales Comparison and/or Market Data Analysis;

6. Attend and complete a minimum, 30 classroom-hour course in the Cost Approach;

7. Attend and complete a minimum, 30 classroom-hour course in Residential Case Studies; and,

8. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in termination of Respondent's probation and **IMMEDIATE REVOCATION** of Respondent's certification

pursuant to notice to Respondent from the Board indicating that Respondent has not paid the administrative penalty.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. All classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to timely submit written documentation evidencing Respondent has successfully passed a reexamination for his certification shall result in termination of Respondent's probation and the **IMMEDIATE REVOCATION** of Respondent's certification pursuant to notice to Respondent from the Board indicating that Respondent has not complied with this condition.

Failure to complete the education required by this Agreed Final Order within the time allotted shall result in termination of Respondent's probation and **IMMEDIATE REVOCATION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the educational requirements of this Agreed Final Order.

ANY SUCH REVOCATION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such revocation or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board.

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been

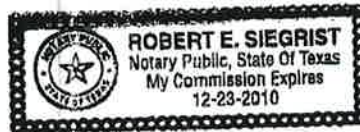
delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 30 day of JULY, 2007.


JOSE JORGE GARCIA

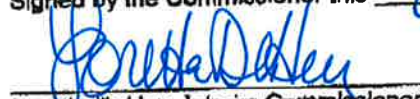
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 30 day of JULY, 2007, by JOSE JORGE GARCIA, to certify which, witness my hand and official seal.


Notary Public Signature

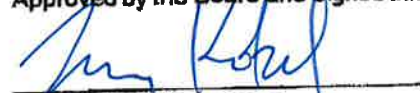



Notary Public's Printed Name

Signed by the Commissioner this 8th day of August, 2007.


Loretta DeHay, Interim Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 10 day of August, 2007.


Larry Kokel, Chairperson
Texas Appraiser Licensing and Certification Board